

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
August 19, 2009 Session

BYRON J. PICKETT v. STATE OF TENNESSEE

Appeal from the Circuit Court for Marion County
No. 7269B J. Curtis Smith, Judge

No. M2008-02678-CCA-R3-PC - Filed October 2, 2009

The Petitioner, Byron J. Pickett, appeals as of right the Marion County Circuit Court's denial of his petition for post-conviction relief. He argues that the denial was error because, prior to pleading guilty to aggravated rape and aggravated kidnapping, he did not receive the effective assistance of counsel and, therefore, his pleas were entered involuntarily. Furthermore, the Petitioner contends that he was incompetent at the time he entered his pleas. All of his arguments center around his mental health. After the appointment of counsel and a full evidentiary hearing, the post-conviction court found that the Petitioner failed to prove his allegations by clear and convincing evidence and denied the petition. Following our review of the record, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Paul Cross, Monteagle, Tennessee (at trial) and Jerry B. Bible, Jasper, Tennessee (on appeal) for the appellant, Byron J. Pickett.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany Faughn, Assistant Attorney General; J. Michael Taylor, District Attorney General; and Sherry Shelton, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On February 7, 2005, a Marion County grand jury returned two indictments against the Petitioner: Case Number 7269—carjacking, especially aggravated kidnapping, aggravated robbery,

and two counts of aggravated rape; and Case Number 7305—carjacking and especially aggravated kidnapping. Following the appointment of counsel, the Petitioner filed a motion for a psychiatric/psychological evaluation on November 7, 2005. The trial court granted the motion and ordered the Petitioner to undergo a mental evaluation. On October 30, 2006, the State filed a notice of intention to seek punishment as a repeat violent offender pursuant to Tennessee Code Annotated section 40-35-120, also called the “three strikes” provision.

The Petitioner pleaded guilty on November 22, 2006, to aggravated rape, a Class A felony, and aggravated kidnapping, a Class B felony. See Tenn. Code Ann. §§ 39-13-305, -502. The remaining charges in both cases were dismissed. Pursuant to the terms of the agreement, the Petitioner received sentences, as a Range II, multiple offender, of twenty-five years for the aggravated rape conviction (100% service required) and twelve years for the aggravated kidnapping conviction (100% service required). These sentences were to be served consecutively to one another and consecutively to the Petitioner’s sentences on two Hamilton County cases and one Lake County case. The State’s “three strikes” notice was stricken.

At the plea acceptance hearing, the State recounted the facts supporting the Petitioner’s pleas. In Case Number 7269, the Petitioner carjacked the victim’s car as she was sitting in a bar parking lot waiting for her mother, a bar employee, and step-father. The Petitioner drove the victim to two different remote locations in Marion County, where he raped the victim at knife-point. At the second location, she was also raped by the Petitioner’s two co-defendants. The men abandoned her unclothed in this isolated area; the Petitioner left in the victim’s mother’s vehicle. The Petitioner’s fingerprints were found on several items inside the vehicle, and his DNA was matched to a condom found at the scene of the second rape. In Case Number 7305, the Petitioner carjacked the victim from an I-24 rest area in Marion County. As she exited the rest area, the Petitioner grabbed her, displaying a knife, and forced her into the vehicle. They traveled to a bank and, while the Petitioner was using the victim’s ATM card, she was able to get out of the vehicle and seek assistance from a man in the parking lot. There were surveillance cameras at the ATM, which captured the Petitioner on video and photographed him. The Petitioner was eventually taken into custody in Georgia.

At the outset of the hearing, the trial court inquired about the Petitioner’s use of intoxicants or drugs:

THE COURT: . . . [Petitioner], have you taken any intoxicants or drugs that are now affecting your ability to think clearly?

[THE PETITIONER]: Yes, Sir.

THE COURT: You’ve taken intoxicants or drugs that are affecting your ability to think?

[THE PETITIONER]: Yes, sir.

THE COURT: Counsel, he's—

[TRIAL COUNSEL]: I think he does take some type of medication. I think his ability to make decisions is okay.

THE COURT: Well, let me ask him, what kind of medication do you take, [Petitioner]?

[THE PETITIONER]: Haldol, Cogetin and Luaril (sic).

THE COURT: And can you tell me what those drugs, why you take those and what they're for, to your knowledge?

[THE PETITIONER]: Schizophrenic.

THE COURT: Okay. How long have you taken those drugs?

[THE PETITIONER]: For a while.

THE COURT: Years?

. . . .

THE COURT: Well, does taking those medications, does that affect your ability to think and communicate with your lawyers?

[THE PETITIONER]: No, sir.

THE COURT: It does not. Have you been able to talk with them today?

[THE PETITIONER]: Yes, sir.

THE COURT: And did you understand what they were talking about when you and them . . . discussed your case?

[THE PETITIONER]: Yes, sir.

THE COURT: Have you been able to understand what I've been saying up until this point?

[THE PETITIONER]: Yes, sir.

The trial court then spoke with the Petitioner regarding his trial rights, and the Petitioner responded appropriately to questions. When asked if he was satisfied with trial counsel's representation, the Petitioner responded affirmatively. The Petitioner also affirmed that he had not been forced or coerced into pleading guilty and that lead trial counsel explained the plea agreement to him before he signed it. Additionally, lead trial counsel¹ noted that the results of the Petitioner's mental competency evaluation had not yet been received, that he was reserving the issue if the evaluation indicated an issue with regard to the Petitioner's competency, and that a statement to this effect was contained in the guilty plea agreement. Lead trial counsel further stated that the State agreed not to oppose a motion to set aside the plea if there was an issue of mental competency. At the conclusion of the hearing, the trial court accepted the Petitioner's pleas.

Following entry of the Petitioner's pleas, lead trial counsel filed a motion for new trial reserving the issue of the Petitioner's mental competency. After the evaluation was completed and the Petitioner was deemed competent, the trial court determined that the issue was rendered moot, and the motion for new trial was stricken.

The Petitioner filed a petition for post-conviction relief on November 13, 2007. Counsel was appointed for the Petitioner, and an amended petition was filed. The issues raised in the pro se and amended petition were: (1) the Petitioner was incompetent at the time he entered his pleas; (2) an unlawfully induced plea or his pleas were involuntarily entered without understanding the nature and consequences of the plea; (3) a violation of the privilege against self-incrimination; (4) a violation of double jeopardy principles; and (5) ineffective assistance of counsel. A hearing was held on September 8, 2008.

The Petitioner claimed that he was not taking Mellaril at the time he entered his pleas and that Mellaril helped him overcome the effects of the other medications he was taking (Haldol, Cogentin, and Lauril). He requested that he be able to withdraw his pleas. According to the Petitioner, without Mellaril, he was unable to fully function, thus being unable to understand and comprehend the nature and consequences of his pleas. The Petitioner testified that he was not taking Mellaril at the time because the Department of Correction "didn't bring it down with" him. With only the three medications, it was difficult for him to understand "what's going on[.]" and he was unable to focus. He also claimed to "hear voices and stuff." According to the Petitioner, on Mellaril, he was able to comprehend "what's going on and what's not going on."

The Petitioner stated that he had been treated for "paranoid schizophrenia, bipolar" and other mental illnesses. He also relayed that he had heart and cholesterol problems. According to the Petitioner, he first started having mental health problems at sixteen years of age, when he was hit in the back of the head.

¹ The Petitioner was represented by two attorneys during the plea proceedings. We will refer to the attorney most involved in the Petitioner's case as lead trial counsel.

The Petitioner asserted that, during the hearing, he informed lead trial counsel that he did not understand the proceedings. The Petitioner claimed that, after he informed the court of what medications he was taking, lead trial counsel took him out of the courtroom, and they talked for a few minutes. He also asserted that, upon their return to the courtroom, lead trial counsel “nudged [his] leg every time he wanted [him] to say yes, sir” in response to questioning by the trial judge. The Petitioner testified that lead trial counsel told him that, if he did not accept the plea bargain, then he would receive a life sentence.

On cross-examination, the Petitioner confirmed that two attorneys were representing him during the proceedings and that both of them were present when the Petitioner entered his pleas. The Petitioner affirmed that his case was set for trial approximately a week after he entered his pleas. According to the Petitioner, both of his attorneys had done a lot of work on his case: they had received discovery; they had met with him on numerous occasions, reviewing the facts of the case and any possible defenses; and they had talked to him about possible punishments. He felt confident that they were representing his best interest “until they started talking about that life sentence.”

When asked if anybody made him enter a plea, he responded in the negative. He confirmed that this was a decision based upon all the facts presented to him and that he was familiar with the court system. He relayed that he was not taking Mellaril at the post-conviction hearing, asserting that it “kept on messing with [his] heart rate.” He acknowledged that he had responded to questioning during the post-conviction hearing and that he had understood the questions asked of him. The Petitioner asserted that he was taking Trazodone as a substitute for Mellaril.

The Petitioner testified that he remembered being present when he entered his pleas, although he did not recall exactly what took place. He did recall discussions with lead trial counsel and affirmed that it was ultimately his decision to plead guilty. He felt a plea was in his best interest due to the possible punishment he might receive if he proceeded to trial. The Petitioner stated that he answered questions truthfully at the guilty plea hearing and acknowledged that he told the trial judge that he was able to understand what was asked of him. The Petitioner also confirmed that the trial judge did not rush him through the plea and that he felt comfortable asking questions if he had any. Moreover, lead trial counsel had previously reviewed his rights with him when he signed the guilty plea agreement.

The Petitioner agreed that he had been treated most recently for his mental health issues by the Department of Correction. A few months before his plea, he had been placed in “special needs” to receive treatment for hearing voices. The problem was resolved with medication, and he returned to the regular prison population. The Petitioner relayed that his mental evaluation was conducted on the morning of his plea. The report reflected that he was friendly and cooperative and answered questions appropriately. His mood was described as “calm, no indication of anxiety or depression[.]” At that time, he was not hearing voices or having hallucinations. He further affirmed that he had little difficulty talking with the doctors that morning and that he understood the charges against him and the legal process. The report indicated that the Petitioner would not have problems defending himself and that he understood his actions at the time he committed the offenses.

On redirect examination, the Petitioner disagreed with the doctors' conclusions, noting that the interview was only two hours long. According to the Petitioner, he never talked in detail with lead trial counsel about his mental condition.

The Petitioner's mother, Patricia Pickett, testified on direct examination about the Petitioner's mental health history, relaying similar information as the Petitioner. On cross-examination, Ms. Pickett stated that she visited the Petitioner at the Sequatchie County Jail and that the Petitioner "talked like he was off the wall or something." She relayed that she informed lead trial counsel about the Petitioner's prior mental health problems and that she believed his attorneys were doing a good job representing him.

Lead trial counsel was next to testify. He stated that he had been a practicing criminal defense attorney for twenty-one years and that he had represented numerous criminal defendants. Lead trial counsel confirmed that he represented the Petitioner from the inception of these proceedings and that he was assisted with this representation by another lawyer. An investigator was retained and spent numerous hours working on the Petitioner's case. He confirmed that trial was set within the week following the Petitioner's plea. When asked if he was ready to proceed to trial, lead trial counsel responded affirmatively. According to lead trial counsel, he was able to have "reasonable" discussions with the Petitioner, and they communicated about his defense.

Lead trial counsel testified that he was aware of the Petitioner's mental health issues and, in light of this information, he filed a motion for a mental evaluation as to competency and a possible insanity defense. The report had not been completed at the time the Petitioner entered his pleas, so lead trial counsel filed a motion for new trial "to preserve the jurisdiction of the court." Once the results were received, the motion was "overruled." According to lead trial counsel, "nothing appeared out of the ordinary in [his] dealings with [the Petitioner]"; he had no problems communicating with the Petitioner, and the Petitioner's reactions were "rational."

Lead trial counsel also stated that he did not notice any difference in the Petitioner on the day of his plea from previous meetings; nothing during the course of the plea proceedings caused him to believe the Petitioner did not understand what was going on. According to lead trial counsel, it was his standard practice to advise clients of their right to proceed to trial and the possible punishments that might result from a guilty verdict. Lead trial counsel stated that it was the Petitioner's decision to plead guilty; "it was a voluntary plea on his part." Lead trial counsel also asserted that he did not force or coerce the Petitioner into pleading guilty, and he denied on cross-examination that he "bumped" the Petitioner's leg to get him to respond to the trial court's questions.

The last witness was June Young, a psychologist and certified forensic evaluator. She testified that she, along with Dr. Kenneth Nickerson, evaluated the Petitioner on November 22, 2006, and that she was responsible for determining the Petitioner's competency to stand trial. She discussed with the Petitioner the facts of the case, the charges against him, the possible punishments he might have received, the roles of various individuals in the courtroom and the legal process, and his understanding of a plea bargain. According to Ms. Young, the Petitioner understood all of these

concepts. She stated that the Petitioner was cooperative throughout the interview, although, at first, he tried to appear less knowledgeable than he really was about the court system. Ms. Young noted that the Petitioner had been in court a number of times before, and she opined that he understood the process.

The Petitioner indicated to Ms. Young that he had confidence in his attorneys and that he agreed with the way they handled the case. She determined that the Petitioner “had the capacity to testify with coherence, relevance and independent judgment[.]” She confirmed that Dr. Nickerson talked with the Petitioner’s family and the jail administrator and that she received medical records from the Department of Correction and Moccasin Bend Mental Health Institute. After compiling all of the necessary information, Ms. Young and Dr. Nickerson determined that the Petitioner was competent to stand trial and that an insanity defense could not be supported. Finally, the report reflected that the Petitioner was “very stable at the time” of the interview.

On cross-examination, Ms. Young was asked about the drug Mellaril. She explained that she was familiar with the drug and that it generally took a month for the drug to be out of an individual’s system once they stopped taking the medication. Up until that point, “[i]t can still be working.” When asked about the effect of Mellaril, she replied that it is used to treat psychosis. Additionally, Ms. Young did not believe it was necessary to refer the Petitioner to the mental health institute for a thirty-day evaluation.

After hearing the evidence presented, the post-conviction court denied relief. First, the post-conviction court determined that the Petitioner was competent at the time he entered his plea. Second, the court ruled that the Petitioner’s pleas were knowingly and voluntarily entered. Third, as for any alleged violations of the privilege against self-incrimination or of double jeopardy principles, the post-conviction found that the Petitioner had not advanced any argument in favor of these grounds at the post-conviction hearing. Finally, the court ruled that the Petitioner received the effective assistance of counsel. An order was entered to this effect on October 14, 2008. This appeal followed.

ANALYSIS

On appeal, the Petitioner argues that the post-conviction court erred in denying him relief because: (1) he was incompetent to enter his pleas; (2) his pleas were not knowingly, voluntarily, and intelligently made; and (3) he received the ineffective assistance of counsel.² As previously noted, all of the Petitioner’s contentions focus on his mental health at the time he entered his pleas.

To sustain a petition for post-conviction relief, a petitioner must prove his or her factual allegations by clear and convincing evidence at an evidentiary hearing. See Tenn. Code Ann. § 40-30-110(f); Momon v. State, 18 S.W.3d 152, 156 (Tenn. 1999). Upon review, this Court will not reweigh or re-evaluate the evidence below; all questions concerning the credibility of witnesses, the

² The Petitioner states the issue only in terms of ineffective assistance of counsel. However, after reviewing the Petitioner’s brief, we believe clarity requires the issues to be outlined as stated.

weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved by the post-conviction judge, not the appellate courts. See Momon, 18 S.W.3d at 156; Henley v. State, 960 S.W.2d 572, 578-79 (Tenn. 1997). The post-conviction judge's findings of fact on a petition for post-conviction relief are afforded the weight of a jury verdict and are conclusive on appeal unless the evidence preponderates against those findings. See Momon, 18 S.W.3d at 156; Henley, 960 S.W.2d at 578.

The Sixth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution guarantee a criminal defendant the right to representation by counsel. State v. Burns, 6 S.W.3d 453, 461 (Tenn. 1999); Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). Both the United States Supreme Court and the Tennessee Supreme Court have recognized that the right to such representation includes the right to "reasonably effective" assistance, that is, within the range of competence demanded of attorneys in criminal cases. Strickland v. Washington, 466 U.S. 668, 687 (1984); Burns, 6 S.W.3d at 461; Baxter, 523 S.W.2d at 936.

A lawyer's assistance to his or her client is ineffective if the lawyer's conduct "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 686. This overall standard is comprised of two components: deficient performance by the defendant's lawyer and actual prejudice to the defense caused by the deficient performance. Id. at 687; Burns, 6 S.W.3d at 461. The defendant bears the burden of establishing both of these components by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f); Burns, 6 S.W.3d at 461. The defendant's failure to prove either deficiency or prejudice is a sufficient basis upon which to deny relief on an ineffective assistance of counsel claim. Burns, 6 S.W.3d at 461; Goad v. State, 938 S.W.2d 363, 370 (Tenn. 1996).

This two-part standard of measuring ineffective assistance of counsel also applies to claims arising out of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58 (1985). The prejudice component is modified such that the defendant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59; see also Hicks v. State, 983 S.W.2d 240, 246 (Tenn. Crim. App. 1998).

In evaluating a lawyer's performance, the reviewing court uses an objective standard of "reasonableness." Strickland, 466 U.S. at 688; Burns, 6 S.W.3d at 462. The reviewing court must be highly deferential to counsel's choices "and should indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Burns, 6 S.W.3d at 462; see also Strickland, 466 U.S. at 689. The court should not use the benefit of hindsight to second-guess trial strategy or to criticize counsel's tactics, see Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982), and counsel's alleged errors should be judged in light of all the facts and circumstances as of the time they were made, see Strickland, 466 U.S. at 690; Hicks v. State, 983 S.W.2d 240, 246 (Tenn. Crim. App. 1998).

A trial court's determination of an ineffective assistance of counsel claim presents a mixed question of law and fact on appeal. Fields v. State, 40 S.W.3d 450, 458 (Tenn. 2001). This Court

reviews the trial court's findings of fact with regard to the effectiveness of counsel under a de novo standard, accompanied with a presumption that those findings are correct unless the preponderance of the evidence is otherwise. Id. "However, a trial court's conclusions of law—such as whether counsel's performance was deficient or whether that deficiency was prejudicial—are reviewed under a purely de novo standard, with no presumption of correctness given to the trial court's conclusions." Id. (emphasis in original).

Once a guilty plea has been entered, effectiveness of counsel is relevant only to the extent that it affects the voluntariness of the plea. In this respect, such claims of ineffective assistance necessarily implicate the principle that guilty pleas be voluntarily and intelligently made. Hill v. Lockhart, 474 U.S. at 56 (citing North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 164 (1970)).

When a guilty plea is entered, a defendant waives certain constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront witnesses. Boykin v. Alabama, 395 U.S. 238, 243 (1969). "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." Id. at 242. Thus, in order to pass constitutional muster, a guilty plea must be voluntarily, understandingly, and intelligently entered. See id. at 243 n.5; Brady v. United States, 397 U.S. 742, 747 n.4 (1970). To ensure that a guilty plea is so entered, a trial court must "canvass[] the matter with the accused to make sure he [or she] has a full understanding of what the plea connotes and of its consequence[s]." Boykin, 395 U.S. at 244. The waiver of constitutional rights will not be presumed from a silent record. Id. at 243.

In State v. Mackey, 553 S.W.2d 337 (Tenn. 1977), the Tennessee Supreme Court set forth the procedure for trial courts to follow in Tennessee when accepting guilty pleas. Id. at 341. Prior to accepting a guilty plea, the trial court must address the defendant personally in open court, inform the defendant of the consequences of a guilty plea, and determine whether the defendant understands those consequences. See id.; Tenn. R. Crim. P. 11. A verbatim record of the guilty plea proceedings must be made and must include, without limitation, "(a) the court's advice to the defendant, (b) the inquiry into the voluntariness of the plea including any plea agreement and into the defendant's understanding of the consequences of his entering a plea of guilty, and (c) the inquiry into the accuracy of a guilty plea." Mackey, 553 S.W.2d at 341.

However, a trial court's failure to follow the procedure mandated by Mackey does not necessarily entitle the defendant to seek post-conviction relief. See State v. Prince, 781 S.W.2d 846, 853 (Tenn. 1989). Only if the violation of the advice litany required by Mackey or Tennessee Rule of Criminal Procedure 11 is linked to a specified constitutional right is the challenge to the plea cognizable in post-conviction proceedings. See Bryan v. State, 848 S.W.2d 72, 75 (Tenn. Crim. App. 1992). "Whether the additional requirements of Mackey were met is not a constitutional issue and cannot be asserted collaterally." Johnson v. State, 834 S.W.2d 922, 925 (Tenn. 1992).

Here, the Petitioner claims that he was incompetent at the time he entered his pleas and that his pleas were not knowingly and voluntarily made due to his mental condition. In support of these arguments, he submits that, because he was not taking Mellaril at the time of the plea acceptance hearing, he was unable to focus. The post-conviction court found that the Petitioner had not provided any evidence that he was prescribed any other medication in addition to the three he was taking and identified on the record at the time of the hearing. Voluminous medical records were entered into evidence at the post-conviction hearing, but it was not pointed out where in all of those documents Mellaril was mentioned. Moreover, Ms. Young testified that Mellaril would generally be in the system for a month after taking it, and the Petitioner did not present any proof how long he had been off of this medication at the time he entered his pleas. Also, no proof was offered to support his contention that his failure to take Mellaril prohibited him from concentrating. The Petitioner admitted that he remembered the mental evaluation conducted on the morning of November 22, 2006, and much of the plea proceedings that followed. He also relayed that he was familiar with the court system.

In reviewing the transcript of the plea hearing, the post-conviction court observed that the Petitioner exhibited no difficulty in understanding the proceedings and that he responded appropriately to questioning. The court also noted that the mental evaluation was conducted on the morning the Petitioner entered his plea; the evaluation described the Petitioner as communicating and functioning appropriately during the evaluation and concluded he was competent to stand trial. The post-conviction court did not accredit the Petitioner's testimony that he was unable to focus at the time he entered his plea. The Petitioner himself stated that the decision to plead guilty was ultimately his and that he determined it was in his best interest to enter a plea rather than proceed to trial. Additionally, on the day of the plea, lead trial counsel did not have any problems communicating with the Petitioner. If he was competent to stand trial, he was competent to plead guilty. See Berndt v. State, 733 S.W.2d 119, 123 (Tenn. Crim. App. 1987).

The Petitioner also claims that lead trial counsel was ineffective. As specific grounds of ineffectiveness, the Petitioner contends that lead trial counsel failed to sufficiently inquire into the Petitioner's medical condition; failed to adequately explain the details of the plea agreement to the Petitioner; failed to advise the trial court of the Petitioner's mental condition; and failed to "recognize and understand" that the Petitioner was incapable of entering a guilty plea. The post-conviction court found that lead trial counsel was an experienced criminal defense attorney and met with the Petitioner on several occasions, communicating well with the Petitioner. An investigator was hired. Also, lead trial counsel testified that he was aware of the Petitioner's mental condition and that he sought a mental evaluation of the Petitioner. Moreover, he sought to preserve the issue at the time of the plea should the results have indicated an issue with the Petitioner's mental competency. Lead trial counsel testified that he discussed the case with the Petitioner, including the possible penalties. The post-conviction court also determined that lead trial counsel spent adequate time with the Petitioner discussing the case and that lead trial counsel found the Petitioner "to be in no different state of mind on November 22, 2006, than at previous meetings." In conclusion, the post-conviction ruled that the Petitioner had failed to prove ineffective assistance of counsel.

In this case, the trial judge did advise and question the Petitioner as mandated by Mackey. The guilty plea transcript reveals that the trial judge carefully reviewed the rights that the Petitioner was waiving and confirms that the Petitioner responded appropriately to questions. The trial court also extensively questioned the Petitioner about the medications he was taking and what effect, if any, these medications had on his ability to understand the proceedings. The Petitioner was asked if he had any complaints about trial counsel, and he answered in the negative. The Petitioner also affirmed that he had not been forced or coerced into pleading guilty. To be sure, the record reflects the Petitioner knew and understood the options available to him prior to the entry of his guilty pleas including the right to plead not guilty and demand a jury trial, and he freely made an informed decision of that course which was most palatable to him at the time.

The Petitioner has failed to show that lead trial counsel did not render effective assistance, that his pleas were involuntarily due to his mental condition, or that he was incompetent at the time he entered them. The evidence does not preponderate against the findings of the post-conviction court. In consequence, the Petitioner is not entitled to relief on these issues.

CONCLUSION

Based upon the foregoing, we conclude that the post-conviction court did not err by denying post-conviction relief. Accordingly, we affirm the judgment of the Marion County Circuit Court.

DAVID H. WELLES, JUDGE